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Google LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANIBAL RODRIGUEZ, et al. individually and
on behalf of all others similarly situated,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 3:20-CV-04688-RS

**DEFENDANT GOOGLE LLC'S MOTION IN
LIMINE NO. 6 TO EXCLUDE TESTIMONY OF
KENT WALKER AND CHRIS PALMER**

Date: July 30, 2025
Time: 09:30 A.M.
Court: Courtroom 3, 17th Floor, SF
Judge: Hon. Richard Seeborg

Date Action Filed: July 14, 2025
Trial Date: August 18, 2025

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on July 30, 2025, at 9:30 A.M., before the Honorable Richard Seeborg of the United States District Court for the Northern District of California in Courtroom 3 of the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Google LLC (“Google”) will move the Court to preclude plaintiffs from calling Chris Palmer and Kent Walker to provide improper impeachment testimony.

This Motion is based on this Notice of Motion, accompanying Memorandum of Points and Authorities, the Omnibus Declaration of Eduardo E. Santacana in Support of Google LLC’s Motions in Limine Nos. 1-12 (“Santacana Decl.”) and exhibits attached thereto, and all other evidence in the record.

ISSUE PRESENTED

Whether, pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rules 402 and 403 of the Federal Rules of Evidence, Plaintiffs should be precluded from calling Chris Palmer and Kent Walker to provide improper impeachment testimony.

Dated: June 24, 2025

COOLEY LLP

By: /s/ Eduardo E. Santacana

Benedict Y. Hur
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 Eduardo Santacana
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*Attorneys for Defendant
 Google LLC*

1 **I. INTRODUCTION**

2 Google respectfully moves in limine to preclude plaintiffs from calling Chris Palmer and
3 Kent Walker to provide improper impeachment testimony.

4 **II. ARGUMENT**

5 Though not disclosed among their trial witnesses, Plaintiffs have indicated that they may call
6 Chris Palmer and Kent Walker as impeachment witnesses. Omnibus Declaration of Eduardo E.
7 Santacana in Support of Google LLC's Motions in Limine Nos. 1-12 ("Santacana Decl.") ¶¶ 7-8.
8 Neither individual possesses knowledge relevant to the issues in this litigation, rendering them
9 improper as impeachment witnesses.

10 Rule 26(a)(3)(A) requires parties to include in their pretrial disclosures the name, address,
11 and telephone number of any witness that party will or may call at trial, unless "solely for
12 impeachment." Fed. R. Civ. P. 26(a)(3)(A)(i). "Impeachment as contemplated by the Rule 26(a)
13 exception refers to attacks on the credibility of a witness and not to rebuttal evidence, which tends
14 to prove any element of a party's claims." *Valiavicharska v. Tinney*, No. CV 10-4847 JSC, 2012 WL
15 13435139 (N.D. Cal. Jan. 31, 2012) (cleaned up) (excluding witness whose testimony was relevant
16 to the substance of the case); *see also Comm. for Immigrant Rights v. Cnty. of Sonoma*, No. C 08-
17 4220 PJH, 2009 WL 1833988, at *3 (N.D. Cal. June 23, 2009) ("impeachment" is not equivalent to
18 "rebuttal," and refers to attacks on the credibility of the conduct).

19 "Evidence is 'solely for impeachment' when it 'has value solely for the purposes of
20 impeaching a witness.'" *Clear-View Techs., Inc. v. Rasnick*, No. 13-cv-02744-BLF, 2015 WL
21 3509384, at *7 (N.D. Cal. June 3, 2015) (quoting *Robert Kubicek Architects & Assoc., Inc. v. Bosley*,
22 No. CV11-2112 PHX DGC, 2013 WL 998222, at *2 (D. Ariz. Mar. 13, 2013)). "If evidence instead
23 has independent relevancy to the merits of the case, the evidence is not solely for impeachment and
24 must be disclosed to opposing counsel pursuant to Rule 26." *Id.* (cleaned up); *see also Wilson v. AM*
25 *Gen. Corp.*, 167 F.3d 1114, 1122 (7th Cir. 1999) (finding that when a witness will offer testimony
26 related to a "primary line of defense" in the suit, the witness is not offered solely for impeachment
27 purposes).

28

1 Chris Palmer is a software engineer who worked on Google Chrome during the relevant time
2 period. Santacana Decl., ¶ 7. This case, by contrast, focuses exclusively on the use of Google
3 Analytics for apps—the Chrome web browser is simply irrelevant. Mr. Palmer was not a document
4 custodian in this case, nor was he deposed. *Id.* Kent Walker, in turn, is Google’s Chief Legal Officer.
5 *Id.*, ¶ 8. He has nothing to do with the issues in this case, and was similarly neither a document
6 custodian or deponent. *Id.* He may not have worked with any of the disclosed trial witnesses and
7 likely does not even know them. It is impossible to imagine how these individuals would have any
8 information bearing on the credibility of any trial witness. *See Valiacharska*, 2012 WL 13435139,
9 at *2.

10 While Mr. Palmer and Mr. Walker possess no information relevant to the issues in this
11 litigation, they are—not coincidentally—featured heavily in other recent, unrelated cases against
12 Google. Mr. Palmer was a key figure in a separate litigation prosecuted by Plaintiffs’ counsel, *Brown*
13 *v. Google LLC*, 5:20-cv-03664-SVK (N.D. Cal.), which centered on Incognito browsing in Google
14 Chrome. There, Plaintiffs’ counsel questioned him about emails concerning user confusion over
15 Incognito Mode and its “Spy Guy” logo. Mr. Walker was a witness in the *Epic v. Google* antitrust
16 litigation, No. 3:21-md-02981-JD (N.D. Cal.), where he was questioned about Google’s retention
17 policies concerning the Google Chat application, culminating in sanctions against Google for failure
18 to preserve chat messages relevant to that case. So far as Google can tell, Plaintiffs seek to call these
19 individuals not to offer testimony bearing on the credibility of any trial witness, but to insinuate
20 wrongdoing and put before the jury irrelevant and prejudicial material that would be independently
21 excludable in this litigation under Rules of Evidence 402 and 403 given its absence of relevance and
22 highly prejudicial nature.

23 “Impeachment is improper when employed as a guise to present substantive evidence to the
24 jury that would be otherwise inadmissible.” *Diaz v. Pima Cnty.*, 34 F. App’x 309, 311 (9th Cir. 2002)
25 (quoting *United States v. Gilbert*, 57 F.3d 709, 711 (9th Cir. 1995) (per curiam)). But that is precisely
26 what Plaintiffs seek to do. If the testimony of Mr. Walker or Mr. Palmer had any relevance at all
27 (and it does not), it would bear on issues other than the credibility of trial witnesses that they have
28 no relationship with. Accordingly, the evidence is by definition not “solely for purposes of

1 impeachment” and should have been timely disclosed. *See Clear-View Techs.*, 2015 WL 3509384,
2 at *6 (precluding undisclosed witnesses from testifying as “impeachment witnesses” where their
3 testimony had broader relevance to the case).

4 Plaintiffs should not be permitted to ambush Google in their rebuttal case with new
5 substantive issues of tenuous relevance to the case, but with a high probability of prejudice. Plaintiffs
6 should be precluded altogether from calling Mr. Palmer and Mr. Walker as trial witnesses.

7 **III. CONCLUSION**

8 Google respectfully requests that the Court preclude plaintiffs from calling Chris Palmer and
9 Kent Walker to provide impeachment-only testimony.

10 Dated: June 24, 2025

COOLEY LLP

11 By: /s/ Eduardo E. Santacana

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**[PROPOSED] ORDER GRANTING
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[PROPOSED] ORDER

Before the Court is Defendant Google LLC's ("Google") Motion in Limine No. 6 to preclude plaintiffs from calling Chris Palmer and Kent Walker to provide improper impeachment testimony.

Having considered the Notice of Motion and Motion in Limine, the incorporated Memorandum of Points and Authorities, the Omnibus Declaration of Eduardo E. Santacana filed concurrently therewith, and the exhibits attached thereto, along with other materials in the record, argument of counsel, and such other matters as the Court may consider, the Court GRANTS Google's Motion.

Accordingly, IT IS HEREBY ORDERED THAT:

Plaintiffs are barred from calling Chris Palmer and Kent Walker to provide improper impeachment testimony at trial in the above-captioned matter.

IT IS SO ORDERED.

DATED: _____

Honorable Richard Seeborg
United States District Judge